

Legal Action and Eviction – What does it mean?

As a Horizon tenant, you signed a Tenancy Agreement agreeing to accept certain rules and conditions. This is a legal document and if you do not keep to these rules and conditions, Horizon may start legal action against you. Ultimately, this may lead to a Sheriff to granting an eviction decree which could lead to you losing your home. We do not want to take legal action against our tenants – we view it as a last resort. Our staff will do all they can to help and support you stay in your home.

However, if you persistently fail to meet your tenancy obligations – whether its not paying your rent, acting in an anti- social way or neglecting the property, we will take legal action. This leaflet explains the various steps in the legal action process and what you can do to prevent it leading to your eviction.

How will you know if you are being threatened with legal action and eviction?

If you haven't been paying your rent or have broken arrangements to pay your arrears our staff will have been in touch with you several times to try and get you to deal with the matter. They will have warned you that failure to address the issue would lead to legal action. Similarly if you have broken another tenancy obligation, for instance if you having been causing nuisance to your neighbours then staff will have been talking to you about this in an effort to get you to do something about it.

So what will happen?

As your landlord Horizon must follow these steps before they can start a rent arrears eviction action:

- **give you clear information** – about the terms of your tenancy agreement, the rent you pay, or any other cost you owe your landlord
- **offer you help and advice** – Horizon will make reasonable efforts to give you help and advice regarding housing benefit or other forms of financial help
- **help you with debt management** – Horizon will give you information on where to get help with managing your debts and refer you to Link's Money Advice Service
- **try to agree a payment plan** – Horizon will agree a payment plan based on your current income and expenditure
- **not to start an eviction action before considering:**
 - **any housing benefit applications** – and whether this will help you to pay off your arrears
 - **your actions** - steps that you are taking which could result in you paying off your arrears in a reasonable time
 - **any payment plan** - whether you are sticking to the terms of any agreed repayment plan
- **encourage you to contact the council** – Horizon will give advice on services provided by your local council to support you through the legal process

There are 5 keys stages in the process

Stage 1 - Notice of Proceedings

A Notice of Proceedings is a legal document which will tell you that Horizon intends to raise court action against you. It will lay out why this action is being taken and what part of your tenancy agreement you have failed to keep to - for instance if you have not paid your rent, you have behaved in an anti-social manner or you have neglected or damaged the property. By law, a Notice must be served **on everyone** in your household over the age of 16 explaining why this action is being raised against you. This Notice is NOT an eviction notice - Horizon cannot evict you without getting a court order. However the notice tells you that Horizon intends to take court action against you to get an order. Please do not ignore it - at this stage if you take action to sort things out we may decide not to take the next step of actually taking you to court.

For example

- If you have rent arrears you could come to an arrangement to deal with them
- If you have let the condition of your house or garden deteriorate, you could take steps to improve things

So, if you get a Notice of Proceedings you **MUST** contact your housing officer and agree what you should do to avoid legal action.

The Notice of Proceedings tells you the earliest date we can raise court action against you (this will be at least four weeks after it is served). After that date the Notice is valid for six months. If you take the required action (for instance if you keep to an arrangement to pay your rent arrears, or there is no repetition of anti-social behaviour) within this six months period then we will **not** ask our solicitors to raise court action.

Because of the seriousness of the situation, you may also want to get independent advice. There a number of organisations which can help you – some of them are detailed at the back of this leaflet.

Stage 2 - Court action

If you do not sort out things out, we will ask our solicitors to start court action. We will write to you telling you we are doing this. We will also notify the Council's homelessness team that you are going to be taken to court and could potentially lose your home. You will receive a Summons from the court. You must not ignore this - if you do you may be evicted. Contact us - it is not too late. Even though court action has started, talk to us to come to an arrangement. If you make an arrangement with us, and keep to it we may decide not to ask the Sherriff to grant an order for your eviction.

If we cannot come to an agreement at this stage we will let you know that we will be asking the Sheriff to grant a decree for eviction.

You should let the Court know in writing why you think you should not be evicted or why you want the eviction stopped. This is called 'replying to the summons' and you'll find details on what to do on your summons. Although you can represent yourself in court, we strongly advise you to seek advice and assistance from one of the agencies detailed at the back of this leaflet or from a solicitor.

Stage 3 - The Court hearing

Whether or not you are represented, it is best if you attend court personally. You or your representative will have chance to give your side of the story. If you accept that you have broken a condition of your tenancy agreement, then you will have a chance to say what you will do to remedy the problem and this could prevent the Sheriff deciding to grant an order for your eviction.

Factors the sheriff will take into account include:

- the amount of the arrears
- the likelihood of your being able to repay the arrears and meet future rent repayments
- the reasons for the arrears arising, for example, illness, sudden loss of employment or problems with housing benefit
- what the landlord has done to try to collect the arrears
- what the consequences of eviction will be for you and your family, for example, will you be homeless and how easy will it be for you to find new accommodation?
- the length of time you have been a tenant and your record as a tenant before the arrears arose
- if you have a joint tenancy, where only one of the tenants is responsible for the arrears - in this case an 'innocent' tenant who has been paying their share of the rent may not be evicted.
- If you have been anti-social, what you have done to ensure it won't happen again.

The Sheriff will hear both sides of the case and make his decision. He can take any of these actions:

- Continue the case

The Sheriff may not make a final decision but arrange a date for another hearing in a few weeks – this could be to allow you to set up and keep to an arrangement to deal with an arrear, get a housing benefit claim in or simply to get more evidence

- Sist the case

If the Sheriff sists this case it means it is being suspended it for now but it means it can be called back to court if you do not keep to any agreement you have made

- Grant decree

If the Sheriff grants decree then it means they have made a decision to grant the order the landlord requests. This decree could be for one or all of these:

- Eviction – ending your legal right to live in the Co-operative’s property
- An order for you to repay any money owed to the Co-operative
- An order to pay court costs

The Sheriff will advise you of his decision at the end of the court hearing. You will also receive a letter from Horizon telling you what the decision was and what action will be taken

Stage 4 - Eviction decree granted

If a decree is granted for your eviction, Horizon can legally evict you. The earliest this can happen is normally 14 days after the decree has been granted but the decree is valid for six months after this.

We will write to you after the court date and advise you that we have obtained a decree. Even at this stage it may be possible for you to take action which will mean that Horizon will not evict you. If you are being evicted because of rent arrears, full payment of the sum outstanding will normally stop the eviction action. You will also be expected to make an arrangement to pay court costs.

If you are being evicted for anti-social behaviour it is unlikely the eviction will be cancelled. However you should still contact Horizon to discuss the situation and any assistance which may be available to you.

Even at this late stage, it is not too late to get legal advice from a solicitor or from any of the agencies listed on the back page. It may be possible to stop an eviction if you have not had representation at the court hearing.

Stage 5 - Eviction decree enforced

If Horizon decides to evict you the Sheriff Officers will be asked to carry out the eviction. We will ask the Sheriff Officer to serve you with a ‘Charge for removing’ which gives you 14 days’ notice of the date and time they will carry out the eviction. When you get this ‘Charge’, and if you haven’t done so already, you may still get legal advice from one of the agencies at the back of this document.

Prior to the time of the eviction you should arrange for yourself and all members of your household to vacate your home and you should also arrange for all your belongings to be removed from the house.

If you do not move out before the eviction date, the Sheriff Officers will remove you and your household from the property. The locks will be changed and you will not be able to re-enter. If you cannot remove your belongings at the time then Horizon may allow you to come back and get them. Please note that we have no duty to allow you to do this and we have no duty to look after your belongings.

What happens after an Eviction?

You should contact the Council's Homelessness Team (details are at the back of this leaflet). You are entitled to advice and support and to be provided with temporary accommodation. If you have been evicted the Council does not have a duty to rehouse you permanently.

You should also bear in mind:

- If you are evicted, this may affect your chances of being rehoused by another housing association or local authority.
- If you are evicted for rent arrears, you are still liable to pay your rent arrears as well as the court costs. Horizon can arrest your wages or bank/building society accounts to recover the debt. You may also be credit blacklisted, and may be refused bank loans, hire purchase or mortgage facilities.

Remember you CAN avoid Eviction.

We only evict tenants only as a last resort, when all other options have been exhausted.

To help avoid eviction you should:

- Act early when difficulties arise
- Keep in contact with us throughout the process
- Seek independent legal advice :
 - you can get free legal advice by contacting Shelter Housing Advice Helpline on 0808 800 4444
 - contacting a solicitor – you may have to pay for this but you may be entitled to legal aid to cover any costs

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